

August 2, 2004

To: Federal Communications Commission

Re: Notice of Proposed Rulemaking  
"Retention by Broadcasters of Program  
Recordings  
MB Docket Number No. 04-232



Dear FCC Commissioners and Staff:

As an AM/FM licensee of 32 years, principally in smaller communities, I wish to comment on this rulemaking. Hopefully I can give you pro-active comments that will make sense and be constructive.

You should know that we have licensed/operated 31 different radio stations in 32 years. The first one was a construction permit received in 1972 after a 3 year hearing. It was for a 500 daytime AM in a city of license of 1,500. We still license and operate that station (though it has been up-graded to 2,500 watts full-time directional. The city of license and local business community has actually declined in size.) Of the 31 stations we have operated, 19 were construction permits either built from scratch (13) or upgraded (6). In addition, of the 13 (12FM/1AM) built from scratch, four subsequently received major CP up-grades. Thus we have built a lot of new radio facilities and provided additional service to under-served rural areas in city's of license generally of less than 100,000 (usually less than 15 - 20,000 people).

In 1972 there were only 4,000 (+/-) radio stations in America. Today there are 12,000 +/- In 1972 there was no internet (1990s), no satellite radio (1980s), minimal cable (1960s but then for better reception of "over the air TV"), no digital cellular service (providing now internet, phone, satellite and more to come). In 1972 the only source of revenue for an "over the air" radio station was advertising. That continues today, while the newer services have multiple streams of revenue (subscription/other and advertising). The new services also provide a number of unregulated programming choices for the public that serve all multiple tastes of morality and diversity. The public today has much more choice from a variety of information delivery sources than in 1972.

#### The Proposal:

The FCC's proposal is to require only "over the air" broadcasters to keep an audio record of every minute of the broadcast day (except the period from 10PM to 6AM) for up to 90 days. If there are 12,000 radio stations to be involved and each one is called on to do this 18 hours a day, it represents 216,000 man hours a day of recorded material (12,000 X 18) from the smallest to the largest station. I am unfamiliar with the number of complaints the FCC is currently getting, but this seems to me to be quite a daily task, not considering any equipment, economic, personnel or storage issues.

Comments:

Can stations record 216,000 hours a programming daily....Yes. Should they have to and will it really serve a purpose? There are probably better, more effective and less onerous ways to accomplish the FCC's objective. Here are a few:

1. Return to 3<sup>rd</sup> Class licensing of broadcast station staff who operate a control board and the transmitter. Each could sign a statement regarding their understanding of the "indecentcy" regulations. This would cover most smaller market stations whose "on air" staff actually runs the board and operates the transmitter. Currently such staff has no formal commitment to the FCC license and the station licensee is an employer with certain obligations to the employee that place them in jeopardy no matter what discipline they try to impose. (In larger markets the impact would be different as much of that talent is not operating the control board/transmitter)
2. Require Networks who provide programming nationally/regionally to keep a recording of the programming (at the source) for a period of time available to affiliates and the FCC. This is probably already being done, but is not commonly known.
3. Consider a "recording requirement" for a station/talent that has multiple complaints regarding very narrowly defined indecentcy. Such complaints (it seems to me)will be about a specific talent/song/program and not the radio station as a whole. The station will then have to defend that talent/song/program (as Infinity is doing for Howard Stern and Clear Channel has elected not to...though with contract re-percussions with Infinity and Stern as program suppliers).
4. Mandate that a radio station can cancel any program supplier contract without that financial obligation if that station is subject to an indecentcy complaint related to a program supplier program.

Comment:

The NPRM suggests that between 2000 and 2002 the FCC received 14,379 complaints covering 598 programs. 169 were dismissed for lack of a tape, transcript, or significant excerpts. That means 14,210 were not dismissed for this reason. I would like to know how many were multiple complaints against the same station/talent. How many different stations were involved, how many of the complaints were against a network/



syndicator supplied program, how many of the complaints were against smaller markets (ie: non-rated by Arbitron), and how many of them were against markets considered to be the top 50 in size. My gut feel is that the bulk of the complaints are in larger radio markets and/or repeat complaints related to specific talents/songs/programs (either in larger markets or supplied to smaller markets via syndication/network).

If my assumption is correct, the bulk of licensees (particularly in smaller markets) are not really the subject of this inquiry, but will be saddled with the burdens if an "across the board" solution of recording of 216,000 hours of daily material is required. At this point, this does not seem to me to make sense on a common sense basis, let alone on a "community need" or "wasted resources" basis. Certainly it does not on an economic/manpower basis.

The NPRM asks about the costs. On an equipment basis, for radio I'm estimating a cost of \$3,000 per station, or \$36,000,000 for 12,000 radio stations. This may not sound like much in government terms, but to smaller individual licensees it is significant. This does not cover any installation, maintenance, on-going operation or storage issues/costs. I'm not in a position to estimate those costs, but it is not minimal. Even though much/most of it should be automatic, all licensees would be saddled with the costs and issues of keeping records on a "guilty until proven innocent" basis when the majority would never be (and have not been) subject to a complaint. It seems to me that the burden should be on the "complainer", but multiple supportable complaints from multiple legitimate complainers would and should put the licensee under additional scrutiny and possible documentation. **This relates only to "indecenty" and not to other kinds of complaints.**

The Freedom of Speech issue. I'm 63 years old. My point of view is quite a bit more conservative than someone in their teens, 20s, 30s, or 40s. Certainly I find younger music today objectionable that younger people do not. The FCC challenges all licensees to provide diversity and it seems that radio accomplishes that. In 1972 with 4,000 stations it was more important (and possible competitively) to serve a broader audience than it is today with 12,000 stations. The Commission in the 1980s with its 80-90 rulings increased the number of stations so there would/could be more consumer choice. In some areas of our country, there is a radio station for every few thousand people. This is particularly true in smaller communities and rural areas. Thus, we have come to more targeting of specific demographic or affinity audiences in radio. I may choose an older station, while a 20 something will choose programming I find objectionable. If this debate eliminates the availability of the 20 something's choice from "over the air radio", the 20 something will just move to the newer technologies (licensed by the FCC) now available where "indecenty" (as defined by the FCC) is readily available. This does not suggest that I support indecenty, but it is the common sense recognition that my tastes are different and things that are not acceptable to me at my age are very acceptable to a younger and changing generation. (this was true of my parents, your parents, their parents and all generations). It also recognizes that the FCC refuses or is unable to apply to the newer technologies the same "indecenty standards" that it proposes for "over the air" broadcasters.

Summary:

The FCC's proposal to require the recording/retention of 216,000 hours daily of radio programming (I have not addressed TV) does not make sense and will not serve the public interest. While I support all efforts to eliminate very, very, very narrowly defined "indecentcy" from the airwaves (all technologies), those efforts must be targeted to the offenders who receive the complaints. The majority of licensees (and almost all small market radio broadcasters) are not the offenders and are not receiving complaints. I am positive about the discussion, but not the proposal, and certainly not the "chill" that this proposal brings to the concept of "free speech" and "freedom of the press". I hope I have given you a few other ideas for consideration.

Sincerely,

A handwritten signature in dark ink, reading "Bayard H. Walters". The signature is fluid and cursive, with the first name "Bayard" being the most prominent part.

Bayard H. Walters, President  
Cromwell Radio Group & Affiliates  
Cromwell Group, Inc.